Bail Slip

The Appellant(herein)/Accused viz., D.Paramasivam was directed to be released on bail in and by the order of this Court dated 10.04.1996 and made in Crl.M.P.1120 of 1996 in Crl.Appeal No.296 of 1996.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL No. 296 of 1996

D.Paramasivam ..Appellant/accused - 16

-vs-

State by Inspector of Police
SPE CBI EOW Madras
(R.C.No.9/76) .. Respondent/complainant

This appeal is filed against the Judgment made in Special C.C.No.7 of 1978 dated 19.2.1996 by the learned Additional Special Judge/1st Additional Sessions Judge-cum-Chief Judicial Magistrate,Coimbatore.

For appellant : : Mrs.S.S.Jayakumari
(Amicus Curiae)

For respondent : : Mr.N.Chandrasekaran
Special Public Prosecutor
for C.B.I.Cases

JUDGMENT

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This appeal has been preferred against A16 in S.C.C.No. 7 of 1978 on the file of the Additional Special Judge/1st Additional Sessions Judge-cum-chief Judicial Magistrate, Coimbatore.

2. The charges levelled against A16 are under Section 120-B IPC r/w Sections 466,467,468 ,471 and 420 IPC and also r/w Sections 5(2) and 5(1)(d) of the Prevention of Corruption Act 1947.

3. The short facts of the prosecution case relevant for the purpose

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of deciding this appeal are as follows:
Along with this accused, 17 other accused have been charged under the above provision of law. The investigation was done by SPE/CBI/ROW , Chennai alleging that during 1973-75 alll the accused have entered into a criminal conspiracy for circulating fake TP.1 permits and by transporting non-duty paid tobacco under fake T.P.1 permits direct to the consignee and by producing fake T.P.1 .permits obtained genuine T.P.1 permits for sending non-duty paid tobacco and in pursuance of the criminal conspiracy A1 to A18 committed various offences and caused pecuniary loss to the Government of India to the tune of Rs.12,00,000/-. The charge sheet was filed against all the accused on 21.7.1978 under Section 120-B r/w 420,466,467,468,471 IPC and Section 5(1) and 5(1)(d) of Prevention of Corruption Act.

3a) After furnishing copies under Section 207 Cr.P.C. on his appearance on summons,the learned trial Judge has framed charges as indicated above and when questioned the accused pleaded not guilty.

4. A16 is an Inspector of Central Excise Department, Chettipalayam at the relevant point of time . Charge Nos. 301 and 302 are concerned with A16. According to the prosecution, A16 who was then functioning as Inspector of Central Excise, Chettipalayam had recommended the issue of L2 licence in respect of fictitious premises at Door No.149,sugunapuram in the name of P.W.127(before the trial Court, he has been examined two times as P.W.127 and P.W.145. P.W.127 would depose that A16 had signed in the various applications for obtaining L2 licence at the instance of A1 and A7 and that he never carried on a tabacco business in door No.149, Sugunapuram,the premises to which L2 licence was recommended by A16. A16 was convicted on the ground that as a Public Servant, if he would have exercised prudence and vigilance at the time of recommending the issuance of L2 licence in respect of door No.149 Sugunapuram,he would have prevented L2 licence being issued in respepct of ficititious premises. Apart from P.W.127, there is no other witness examined on the side of the prosecution to prove the guilt of A16 under Section 420 IPC r/w 34 IPC and under Section 5(2) r/w 5(1)(d) of Prevention of Corruption Act 1947.

5. Mrs.S.Jayalakshmi, the learned Amicus Curiae appearing for A16 would contend that except the allegation that A16 while issuing L2 licence without care and caution had recommended the same in respect of a fictitious premises at door No.149, Sugunapuram,there is no other allegation against A16. Under such circumstances, the charge levelled against A16 would not have been stated to be proved.

6.The learned Special Public Prosecutor for CBI Cases would also bring to the notice of this Court a dictum of the Apex Court in M.Narayanan-vs- State of Kerala(AIR 1963 Supreme Court, 1116) wherein the relevant observation applicable to the present facts of the case runs as follows:

"No doubt all penal statues are to be constrained

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strictly, that is to say, the Court must see that the thing charged as an offence is within the plain meaning of the words used, and must not strain the words on any notion that there has been a slip, that there has been a 'casus omissus', that the thing is so clearly within the mischief that it must have been intended to be included if thought of. On the other hand, the person charged has a right to say that the thing charged although within the words, is not within the spirit of the enactment. But where the thing is brought within the words and within the spirit, there a penal enactment is to be construed, like any other instrument, according to the fair common sense meaning of the language used, and the Court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument."

In our view this passage, if we may say so, restates the rule of construction of a penal provision from a correct perspective. As we will presently show the case of the appellant on the facts found clearly falls not only within the words of clause(d) but also within its spirit. Indeed if his argument be accepted not only we will be doing violence to the language but also to the spirit of the enactment. First taking the pharaseology used in the clause, the case of a public servant causing wrongful loss to the Government by benefitting a third party squarely falls within it. Let us look at the clause"by otherwise abusing the position of a public servant", for the argument mainly turns upon the said clause. The pharaseology is very comprehensive. It covers acts done"otherwise" than by corrupt or illegal means by an officer absuing his position. The gist of the offence under this clause is, that a public officer absuing his position as a public servant obtains for himself or for any other person any valuable thing or pecuniary advantage."Abuse" means mis-use ie., using his position for something for which it is not intended. That abuse may be by corrupt or illegal means or otherwise than those means. The word'otherwise' has wide connotation and if no limitation is placed on it, the words"corrupt','illegal' and 'otherwise' mentioned in the clause become surplusage, for on that construction every abuse of position is gathered by the clause. So some limitation will have to be put on that word and that limitation is that it takes colour from the preceding words along with which it appears

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in the clause, that is to say, something savouring of dishonest act on his part. The contention of the learned counsel that if the clause is widely construed even a recommendation made by a public servant for securing a job for another may come within the clause and that could not have been the intention of the Legislature. But in our view such innocuous acts will not be covered by the said clause. The juxtaposition of the word'otherwise' with the words'corrupt or illegal means' , and the dishonestly implicit in the word "abuse" indicate the necessity for a dishonest intention on his part to bring

him within the meaning of the clause. Whether he abused his position or not depends upon the facts of each case; nor can the word'obtains' be sought in aid to limit the express words of the section. 'obtain' means acquire or get. If a corrupt officer by the said means obtains a valuable thing or a pecuniary advantage, he can certainly be said to obtain the said thing or a pecuniary advantage; but it is said that in clauses(a) and (c) the same word is used and in the context of those clauses it can only mean getting from a third party other than the Government and therefore the same meaning must be given to the said word in clause(d) "obtains" in clauses (a) and (b) in the context of those provisions may mean taking a bribe from a third party, but there is no reason why the same meaning shall be given to that word used in a different context when that word is comprehensive enough to fit in the scheme of that provision."

If we applies the principle laid down in the above said dictum A16 cannot be held guilty either under Section 420 r/w 34 IPC or under Section 5(2) and 5(1)(d) of the Prevention of Corruption Act 1947. It cannot be said that he had mens rea at the time of recommending for the issue of L2 licence.If he would have been taken some care and caution then he would have avoided issuing L2 licence in respect of fictitious premises in door No.149,sugunapuram, for which lapse , I am of the opinion that he is liable only for a departmental action and not to be penalised under the above provisions of law. Under such circumstances, I hold that the charge levelled against A16 cannot stated to be proved beyond any reasonable doubt.

7. In the result, Crl.A.No.296 of 1996 is allowed and conviction and sentence imposed on A16 in S.C.C.No. 7 of 1978 on the file of the Additional Special Judge/1st Additional Sesssions Judge-cum- Chief Judicial Magistrate ,Coimbatore is set aside and A16 is set at liberty. Fine amount, if any paid, by A16 shall be refunded to him. The bail bond executed by A16 shall stand cancelled.

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8.Mrs. S.Jayakumari, learned counsel was appointed as Amicus Curiae. This Court records the appreciation of the valuable service rendered by Amicus Curiae. Her remuneration is fixed as Rs.3,000/-(Ruees Three thousand)Only to be paid by the Tamil Nadu State Legal Services Authority.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sg

To

1. The Additional Special Judge/I Additional Sessions Judge-Cum-Chief Judicial Magistrate, Coimbatore
2. -do- through the Principal Sessions Judge, Coimbatore.
3. The Inspector of Police, SPE CBI EOW ,Madras.
4. The Special Public Prosecutor,CBI Cases, Madras.
5. The Secretary ,Tamil Nadu State Legal Services Authority
   Chennai.

1 cc To Mr.S.Jayakumari, Advocate, SR.21464.

Crl.A.No.296/1996

KG(CO)
RVL 13.04.2007

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